

# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF  
HAWAII:**

SECTION 1. The purpose of this act is to create equity between the rights and benefits afforded to Hawaii's employees and the fiscal needs of Hawaii's employers. This bill seeks to ensure the stability of the State of Hawaii's workers' compensation system and to protect it from experiencing the same crippling hardships faced by other states.

SECTION 2. Section 386-1, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and by amending the definitions of "employment" and "physician" to read as follows:

**"§386-1 Definitions.**

"Attending physician" means a doctor or physician as defined in chapters 453 and 460, or dentistry defined in chapter 448, who is primarily responsible for the treatment of a work related injury. An employee shall have no more than one attending physician. Treatment by other physicians or health care providers may be allowed and referred by the attending physician, if the attending physician determines the employee's injury or illness involves more than one

body system and requires multidisciplinary care or is so severe or complex that the services of more than one qualified physician or health care provider are required, provided that:

(1) The attending physician does not have a financial interest in the qualified physician or health care provider providing services. "Financial interest" means an ownership or investment interest through debt, equity, or any other means;

(2) That palliative care or service rendered by chiropractors, naturopaths, optometrists, podiatrists, psychologists, massage therapists or any provider of care that does not qualify as the attending physician under this chapter, be limited for a period of 60 days from the date of first visit on the initial claim or for fifteen visits, whichever first occurs; and

(3) Concurrent treatment beyond that allowed in paragraph (2) of this section, shall be approved by the department in accordance with applicable rules adopted by the director.

"Employment" means any service performed by an individual for another person under any contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully entered into. It includes service of public officials, whether elected or under any appointment or contract of hire express or implied.

"Employment" does not include the following service:

(1) Service for a religious, charitable, educational, or nonprofit organization if performed in a voluntary or unpaid capacity;

(2) Service for a religious, charitable, educational, or nonprofit organization if performed by a recipient of aid therefrom and the service is incidental to or in return for the aid received;

(3) Service for a school, college, university, college club, fraternity, or sorority if performed by a student who is enrolled and regularly attending classes and in return for board, lodging, or tuition furnished, in whole or in part;

(4) Service performed by a duly ordained, commissioned, or licensed minister, priest, or rabbi of a church in the exercise of the minister's, priest's, or rabbi's ministry or by a member of a religious order in the exercise of nonsecular duties required by the order;

(5) Service performed by an individual for another person solely for personal, family, or household purposes if the cash remuneration received is less than \$225 during the current calendar quarter and during each completed calendar quarter of the preceding twelve-month period;

(6) Domestic, which includes attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, performed by an individual in the employ of a recipient of social service payments;

(7) Service performed without wages for a corporation without employees by a corporate officer in which the officer is at least a twenty-five per cent stockholder;

(8) Service performed by an individual for a corporation if the individual owns at least fifty per cent of the corporation; provided that no employer shall require an employee to incorporate as a condition of employment; [~~and~~]

(9) Service performed by an individual for another person as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the other person is performed for remuneration solely by way of commission[~~-~~];

(10) Service performed by a member of a limited liability company if the member is an individual and has a distributional interest, as defined in chapter 428, of at least fifty per cent in the company; provided that no employer shall require an employee to form a limited liability company as a condition of employment; and

(11) Service performed by a partner of a partnership, as defined in chapter 425, if the partner is an individual; provided that no employer shall require an employee to become a partner as a condition of employment; and

(12) Service performed by a partner of a limited liability partnership if the partner is an individual and has a transferable interest as defined in section 425-127 in the partnership of at least fifty percent; provided that no employer shall require an employee to form a limited liability partnership as a condition of employment; and

(13) Service performed by a sole proprietor.

As used in this ~~[paragraph]~~ definition, "religious, charitable, educational, or nonprofit organization" means a corporation, unincorporated association, community chest, fund, or foundation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

"Maximum medical improvement" means that no further improvement in the injured employee's work-related condition can be expected from treatment or the passage of time. A finding of maximum medical improvement shall not be precluded by a need for medical care that will not significantly improve the condition and may be needed to prevent deterioration of the condition due solely to the passage of time.

"Palliative care" means medical service rendered to reduce or temporarily moderate the intensity of an otherwise stable medical condition, but does not include those medical services rendered to diagnose, heal, permanently alleviate or, eliminate a medical condition.

"Physician" includes a doctor of medicine, a dentist, ~~[a chiropractor,~~ and an osteopath~~[, a naturopath, a psychologist, an optometrist, and a podiatrist.]."~~

SECTION 3. Section 386-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~"(c) [A claim for mental stress resulting solely from disciplinary action taken in good faith by the employer shall not be allowed; provided that if a collective bargaining agreement or other employment agreement specifies a different standard than good faith for disciplinary actions, the standards set in the collective bargaining agreement or other employment agreement shall be applied in lieu of the good faith standard. For purposes of this subsection, the standards set in the collective bargaining agreement or other employment agreement shall be applied in any proceeding before the department, the appellate board, and the appellate courts.] No compensation shall be allowed for mental injury or illness proximately caused by personnel actions taken in good faith, including disciplinary action, counseling, work evaluation or criticism, job transfer, layoff, demotion, suspension,~~

termination, retirement, or other good faith actions associated ordinarily with personnel administration."

SECTION 4. Section 386-21, Hawaii Revised Statutes, is amended as follows:

**"§386-21 Medical Care, Services, and Supplies. (a)**

Immediately after a work injury sustained by an employee and so long as reasonably needed the employer shall furnish to the employee all medical care, services, and supplies as the nature of the injury requires. The liability for the medical care, services, and supplies shall be subject to the deductible under section 386-100

(b) Whenever medical care is needed, the employer may mandate the injured employee to select from an employer designated healthcare provider list, which shall contain no less than three physicians and or physician networks, to provide medical services for the first one-hundred and twenty days of medical treatment. Further:

(1) In the absence of any employer designated medical care provider list, which must be furnished upon date of employment or prior to date of injury, the injured employee may select any physician or surgeon who is practicing on the island where the injury was incurred to render such care. If the services of a specialist are indicated, the employee may select any such physician or surgeon practicing in the State. The director may authorize the selection of a specialist practicing outside the State where no comparable medical attendance within the State is available. Upon procuring the services of such physician or surgeon, the injured employee shall give proper notice of the employee's selection to the employer within a reasonable time after the beginning of the treatment. If for any reason during the period when medical care is needed, the employee wishes to change to another physician or surgeon, the employee may do so in accordance with rules

prescribed by the director. If the employee is unable to select a physician or surgeon and the emergency nature of the injury requires immediate medical attendance, or if the employee does not desire to select a physician or surgeon and so advises the employer, the employer shall select the physician or surgeon. Such selection, however, shall not deprive the employee of the employee's right of subsequently selecting a physician or surgeon for continuance of needed medical care[?] ; and

(2) Only after one hundred twenty days of treatment for a work injury, may an employee utilizing an employer designated healthcare provider list opt to change attending physicians for any reason; and

(3) Fifty percent of the employer designated healthcare provider list must contain qualified healthcare providers who reside on the island where the injured employee resides.

(c) The liability of the employer for medical care, services, and supplies shall be limited to the charges computed as set forth in this section. The director shall make determinations of the charges and adopt fee schedules based upon those determinations. Effective January 1, 1997, and for each succeeding calendar year thereafter, the charges shall not exceed one hundred ten per cent of fees prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii as prepared by the United States Department of Health and Human Services, except as provided in this subsection. Effective January 1, 2005, and for each succeeding calendar year thereafter, the charges for emergency room services provided within forty-eight hours from point of injury, shall be charged at usual and customary, but shall not exceed two hundred per cent of fees prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii as prepared by the United States Department of Health and Human Services, except as provided in this subsection. The rates or fees

provided for in this section shall be adequate to ensure at all times the standard of services and care intended by this chapter to injured employees.

If the director determines that an allowance under the medicare program is not reasonable, or if a medical treatment, accommodation, product, or service existing as of June 29, 1995, is not covered under the medicare program, the director may, at any time, establish an additional fee schedule or schedules not exceeding the prevalent charge for fees for services actually received by providers of health care services to cover charges for that treatment, accommodation, product, or service. If no prevalent charge for a fee for service has been established for a given service or procedure, the director shall adopt a reasonable rate that shall be the same for all providers of health care services to be paid for that service or procedure.

The director shall update the schedules required by this section every three years or annually, as required. The updates shall be based upon:

(1) Future charges or additions prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii as prepared by the United States Department of Health and Human Services; or

(2) A statistically valid survey by or submitted to the director of prevalent charges for fees for services actually received by providers of health care services or based upon the information provided to the director by the appropriate state agency having access to prevalent charges for medical fee information.

When a dispute exists between an insurer or self-insured employer and a medical service provider regarding the amount of a fee for medical services, the director may resolve the dispute in a summary manner as the director may prescribe; provided that a provider shall not charge more than the provider's private patient charge for the service rendered.

(d) If it appears to the director that the injured employee has wilfully refused to accept the services of a competent physician or surgeon selected as provided in this section, or has wilfully obstructed the physician or surgeon, or medical, surgical, or hospital services or supplies, the director may consider such refusal or obstruction on the part of the injured employee to be a waiver in whole or in part of the right to medical care, services, and supplies, and may suspend the weekly benefit payments, if any, to which the employee is entitled so long as such refusal or obstruction continues.

(e) Such funds as are periodically necessary to the department to implement the foregoing provisions may be charged to and paid from the special compensation fund provided by section 386-151.

(f) In cases where the compensability of the claim is not contested by the employer, the medical services provider shall notify or bill the employer, insurer, or the special compensation fund for services rendered relating to the compensable injury within two years of the date services were rendered. Failure to bill the employer, insurer, or the special compensation fund within the two-year period shall result in the forfeiture of the medical service provider's right to payment. The medical service provider shall not directly charge the injured employee for treatments relating to the compensable injury."

SECTION 5. Section 386-22, Hawaii Revised Statutes, is amended to read as follows:

**"§386-22 Artificial member and other aids.** Where an injury results in the amputation of an arm, hand, leg, or foot, or the enucleation of an eye, or the loss of natural or artificial teeth, or the loss of vision which may be partially or wholly corrected by the use of lenses, the employer shall furnish an artificial member to take the place of each member lost and, in the case of correctible loss of vision, a set of suitable glasses. Where it is certified to be necessary by ~~[a licensed]~~ the attending physician or surgeon chosen by agreement of the employer and the employee, the employer shall furnish such other aids, appliances, apparatus, and supplies as are required to cure or relieve the effects of the injury. When ~~[a licensed]~~ the attending physician or surgeon, chosen as above, certifies that it is necessitated by ordinary wear,

the employer shall repair or replace such artificial members, aids, appliances, or apparatus.

Where an employee suffers the loss of or damage to any artificial member, aid, appliance, or apparatus by accident arising out of and in the course of the employee's employment, the employer shall repair or replace the member, aid, appliance, or apparatus whether or not the same was furnished initially by the employer.

The liability of the employer for artificial members, aids, appliances, apparatus, or supplies as is imposed by this section shall be limited to such charges as prevail in the same community for similar equipment of a person of a like standard of living when the equipment is paid for by that person and shall be subject to the deductible under section 386-100."

SECTION 6. Section 386-25, Hawaii Revised Statutes, is amended to read as follows:

**"§386-25 Vocational rehabilitation.** (a) The purposes of vocational rehabilitation are to restore an injured worker's earning capacity as nearly as possible to that level which the worker was earning at the time of injury and to return the injured worker to suitable work in the active labor force as quickly as possible in a cost-effective manner.

(b) The director may refer employees who may have or have suffered permanent disability as a result of work injuries and who in the director's opinion can be vocationally rehabilitated to the department of human services or to private providers of rehabilitation services for vocational rehabilitation services that are feasible. A referral shall be made upon recommendation of the rehabilitation unit established under section 386-71.5 and after the employee has been deemed physically able to participate in rehabilitation by the employee's attending physician. No plan shall include vocational rehabilitation requiring vocational or academic instruction permitting the employee to become self-employed, nor shall successive plans for vocational rehabilitation be implemented without the approval of the employer.

The unit shall include appropriate professional staff and shall have the following duties and responsibilities:

(1) To review and approve rehabilitation plans developed by certified providers of rehabilitation services, whether they be private or public;

(2) To adopt rules consistent with this section which shall expedite and facilitate the identification, notification, and referral of industrially injured employees to rehabilitation services, and establish minimum standards for providers providing rehabilitation services under this section;

(3) To certify private and public providers of rehabilitation services meeting the minimum standards established under paragraph (2); and

(4) To enforce the implementation of rehabilitation plans.

(c) The director shall approve a plan of rehabilitation as meeting fully the employer's obligation under this section that includes a program modifying the employee's job through changes to the work process or function, providing alternative work within the employee's physical limitations, or locating reemployment with a new employer using the employee's existing job skills. Notwithstanding subsection (e), the employee's refusal to accept a plan under this subsection shall terminate compensation for temporary total disability.

~~[(+e)]~~(d) Enrollment in a rehabilitation plan or program shall not be mandatory and the approval of a proposed rehabilitation plan or program by the injured employee shall be required. ~~[The injured employee may select a certified provider of rehabilitation services. Both the certified provider and the injured employee, within a reasonable time after initiating rehabilitation services, shall give proper notice of selection to the employer.]~~ All plans developed under this subsection by a certified provider of rehabilitation services, who shall be chosen and agreed upon by both the employee and employer, shall be subject to a performance review for effectiveness before

implementation and twenty-six weeks after said implementation. No plan for rehabilitation shall extend, nor shall any extension be granted, beyond the initial twenty-six weeks without a written performance review. The attending physician, certified vocational rehabilitation plan counselor and employer, in consultation with the employee or employee's representative, if applicable, shall conduct the performance review to ensure that the plan is likely to result in return to suitable gainful employment. In instances where there is no agreement, the director shall make the final determination for implementation and any extension of an additional 26 weeks. No vocational rehabilitation plan, including the creation of a plan and subsequent reviews, shall exceed one-hundred and four weeks in its entirety.

[~~(d)~~](e) An injured employee's enrollment in a rehabilitation plan or program shall not affect the employee's entitlement to temporary total disability compensation if the employee earns no wages during the period of enrollment. If the employee receives wages for work performed under the plan or program, the employee shall be entitled to temporary total disability compensation in an amount equal to the difference between the employee's average weekly wages at the time of injury and the wages received under the plan or program, subject to the limitations on weekly benefit rates prescribed in section 386-31(a). The employee shall not be entitled to such compensation for any week during this period where the wages equal or exceed the average weekly wages at the time of injury.

(f)[~~(e)~~] The director shall adopt rules for additional living expenses necessitated by the rehabilitation program, together with all reasonable and necessary vocational training.

(g)[~~(f)~~] If the rehabilitation unit determines that vocational rehabilitation is not possible or feasible, it shall certify such determination to the director.

(h)[~~(g)~~] The eligibility of any injured employee to receive other benefits under this chapter shall in no way be affected by the employee's entrance upon a course of vocational rehabilitation as herein provided.

(i)[~~(h)~~] Vocational rehabilitation services for the purpose of developing a vocational rehabilitation plan may be approved by the director and the director may periodically review progress in each case."

SECTION 7. Section 386-26, Hawaii Revised Statutes, is amended to read as follows:

**"§386-26 Guidelines on frequency of treatment and reasonable utilization of health care and services.** Except as specified in section 386-1, [The]the director shall issue guidelines for the frequency of treatment and for reasonable utilization of medical care and services by health care providers that are considered necessary and appropriate under this chapter.

With exception to the provisions provided to employers under section 386-21, [T]the guidelines shall be adopted pursuant to chapter 91 and shall not interfere with the injured employee's rights to exercise free choice of physicians under section 386-21.

In addition, the director shall adopt updated medical fee schedules referred to in section 386-21 and where deemed appropriate shall establish separate fee schedules for services of health care providers as defined in section 386-1 to become effective no later than June 30, 1986, in accordance with chapter 91."

SECTION 8. Section 386-31, Hawaii Revised Statutes, is amended by amending subsection (b) as follows:

"(b) Temporary total disability. Where a work injury causes total disability not determined to be permanent in character, the employer, for the duration of the disability, but not including the first three calendar days thereof, shall pay the injured employee a weekly benefit at the rate of sixty-six and two-thirds per cent of the employee's average weekly wages, subject to the limitations on weekly benefit rates prescribed in subsection (a), or if the employee's average weekly wages are less than the minimum weekly benefit rate prescribed in subsection (a), at the rate of one hundred per cent of the employee's average weekly wages.

The employer shall pay temporary total disability benefits promptly as they accrue to the person entitled thereto

without waiting for a decision from the director, unless such right is controverted by the employer in the employer's initial report of industrial injury. The first payment of benefits shall become due and shall be paid no later than on the tenth day after the employer has been notified of the occurrence of the total disability, and thereafter the benefits due shall be paid weekly except as otherwise authorized pursuant to section 386-53.

The payment of such benefits shall only be terminated upon order of the director or if the employee is able to resume work[-], if maximum medical improvement has been reached, if the employee has filed a false claim, or upon payment of one-hundred and four weeks of benefits, whichever comes first. In the event that temporary total disability are paid for one-hundred and four weeks, the director may order a continuation of benefits after a hearing in which adequate evidence is presented to support a finding that maximum medical improvement has not been achieved or that the injury is deteriorating. When the employer is of the opinion that temporary total disability benefits should be terminated because the injured employee is able to resume work, the employer shall notify the employee and the director in writing of an intent to terminate such benefits at least two weeks prior to the date when the last payment is to be made. The notice shall give the reason for stopping payment and shall inform the employee that the employee may make a written request to the director for a hearing if the employee disagrees with the employer. Upon receipt of the request from the employee, the director shall conduct a hearing as expeditiously as possible and render a prompt decision as specified in section 386-86.

An employer or insurance carrier who fails to comply with this section shall pay not more than \$2,500 into the special compensation fund upon the order of the director, in addition to other penalties prescribed in section 386-92.

(1) In any case where the director determines based upon a review of medical records and reports and other relevant documentary evidence that an injured ~~[employee's medical condition may be stabilized]~~ employee has reached maximum medical improvement and the employee is unable to return to the

employee's regular job, the director shall issue a preliminary decision regarding the claimant's entitlement and limitation to benefits and rights under Hawaii's workers' compensation laws. The preliminary decision shall be sent to the affected employee and the employee's designated representative and the employer and the employer's designated representative and shall state that any party disagreeing with the director's preliminary findings of ~~[medical stabilization]~~ maximum medical improvement and work limitations may request a hearing within twenty days of the date of the decision. The director shall be available to answer any questions during the twenty-day period from the injured employee and affected employer. If neither party requests a hearing challenging the director's finding the determination shall be deemed accepted and binding upon the parties. In any case where a hearing is held on the preliminary findings, any person aggrieved by the director's decision and order may appeal under section 386-87.

A preliminary decision of the director shall inform the injured employee and the employer of the following responsibilities, benefits, and limitations on vocational rehabilitation benefits which are designed to facilitate the injured employee's early return to suitable gainful employment:

(A) That the injured employee may invoke the employee's rights under section 378-2, 378-32, or 386-142, or all of them, in the event of unlawful discrimination or other unlawful employment practice by the employer.

(B) That after termination of temporary total disability benefits an injured employee who resumes work may be entitled to permanent partial disability benefits, which if awarded, shall be paid regardless of the earnings or employment status of the disabled employee at the time.

(2) In any case in which the rehabilitation unit determines that an injured employee is not a feasible candidate for rehabilitation and that the employee is unable to resume the employee's regular job, it shall promptly certify the same to the director. Soon thereafter, the director shall conduct a hearing to determine whether the injured employee remains temporarily totally disabled, or whether the employee is permanently partially disabled, or permanently totally disabled."

SECTION 9. Section 386-32, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Temporary partial disability. Where a work injury causes partial disability, not determined to be permanent, which diminishes the employee's capacity for work, the employer, beginning with the first day of the disability and during the continuance thereof, shall pay the injured employee weekly benefits equal to sixty-six and two-thirds per cent of the difference between the employee's average weekly wages before the injury and the employee's weekly earnings thereafter, subject to the schedule for the maximum [~~and minimum~~] weekly benefit [~~rates~~] rate prescribed in section 386-31."

SECTION 10. Section 386-86, Hawaii Revised Statutes, is amended to read as follows:

"(a) If a claim for compensation is made, the director shall make such further investigation as deemed necessary

and render a decision within sixty days after the conclusion of the hearing awarding or denying compensation, stating the findings of fact and conclusions of law. The director may extend the due date for decisions for good cause provided all parties agree. The decision shall be filed with the record of the proceedings and a copy of the decision shall be sent immediately to each party.

(b) Validity of agreement to arbitrate. At anytime after a claim for compensation is made and before the director renders a decision, the parties may agree in writing to submit to arbitration any controversy arising under this chapter. An agreement in writing to submit a controversy arising under this chapter to arbitration shall be valid, enforceable, and irrevocable, except upon a ground that exists at law or in equity for revocation of a contract. An adhesion contract to arbitrate shall be invalid and unenforceable under this chapter.

(c) Compelling compliance with agreement. A party aggrieved by the failure, neglect, or refusal of another to perform under an agreement in writing providing for arbitration, may apply to the director for an order directing that the arbitration proceed in the manner provided for in the agreement. If the director finds that that there is an enforceable agreement, the director shall order the parties to arbitrate. If the director finds that there is no enforceable agreement, the director shall resolve the controversy in accordance with this chapter

(d) Appointment of arbitrator. If the parties to the agreement agree on a method for appointing an arbitrator, that method shall be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the director shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the Agreement to arbitrate or appointed pursuant to the agreed method. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

(e) Costs. Unless otherwise provided in the agreement, the costs and fees of arbitration shall be divided equally between the parties.

(f) Stay of proceedings. Upon being satisfied that the parties entered into an arbitration agreement in accordance with this chapter, the director shall stay any action or proceeding regarding any controversy submitted to arbitration until the arbitration has been completed in accordance with the terms of the agreement.

(g) Witnesses; attendance. All laws and rules regarding this chapter remain applicable to the arbitration proceedings. An arbitrator selected under this chapter may summon in writing any person to attend before the arbitrator as a witness and in a proper case order the witness to bring any relevant document to the hearing.

(h) Arbitration Award. The arbitrator shall issue and submit the arbitrator's findings of fact and award no later than sixty days after the hearing, and shall deliver the award to all parties personally or by registered or certified mail.

(i) Approval; vacating award. The director shall defer to the arbitrator's findings and fact and approve the arbitrator's award, but may vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was:

(A) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(B) Corruption by an arbitrator; or

(C) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to this chapter, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate; unless the person participated in the arbitration proceeding without raising the objection; or

(6) Where the arbitration award is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

Where the arbitrator's award is vacated, the director may in its discretion direct a rehearing by the arbitrator or may resolve the controversy after providing the parties the opportunity to be heard in accordance with this chapter.

(j) Modifying or correcting award. The director may request that miscalculation or clerical errors be corrected before the approval of the arbitrator's award.

(k) Effect of approved award. The director's approval of the arbitration award has the same force and effect as a director's decision rendered under this chapter; and it may be enforced, as if it had been rendered in an action before the director.

(l) Appeal. Unless the arbitrator finds that the parties agreed that no appeal may be taken, an appeal may be taken from an arbitration award approved by the director in accordance with section 386-87.

(m) Mediation. At anytime after a claim for compensation is made and before the director renders a decision, the parties may agree to resolve any controversy regarding this chapter through mediation by a mediator agreed upon by the parties. Unless otherwise provided in the agreement, the costs and fees of mediation shall be divided equally between the parties. Upon the successful conclusion of the

mediation, the parties shall submit the settlement agreement to the director for approval. If any controversy remains unresolved after the mediation, the parties may request the director resolve the controversy after providing the parties the opportunity to be heard in accordance with this chapter."

SECTION 11. Section 386-98, Hawaii Revised Statutes, is amended to read as follows:

**"§386-98 Fraud violations and penalties.** (a) A fraudulent insurance act, under this chapter, shall include acts or omissions committed by any person who intentionally or knowingly acts or omits to act so as to obtain benefits, deny benefits, obtain benefits compensation for services provided, or provides legal assistance or counsel to obtain benefits or recovery through fraud or deceit by doing the following:

(1) Presenting, or causing to be presented, any false information on an application;

(2) Presenting, or causing to be presented, any false or fraudulent claim for the payment of a loss;

(3) Presenting multiple claims for the same loss or injury, including presenting multiple claims to more than one insurer except when these multiple claims are appropriate and each insurer is notified immediately in writing of all other claims and insurers;

(4) Making, or causing to be made, any false or fraudulent claim for payment or denial of a health care benefit;

(5) Submitting a claim for a health care benefit that was not used by, or on behalf of, the claimant;

(6) Presenting multiple claims for payment of the same health care benefit;

(7) Presenting for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time;

(8) Misrepresenting or concealing a material fact;

(9) Fabricating, altering, concealing, making a false entry in, or destroying a document;

(10) Making, or causing to be made, any false or fraudulent statements with regard to entitlements or benefits, with the intent to discourage an injured employee from claiming benefits or pursuing a workers' compensation claim; or

(11) Making, or causing to be made, any false or fraudulent statements or claims by, or on behalf of, a client with regard to obtaining legal recovery or benefits.

(b) No employer shall wilfully make a false statement or representation to avoid the impact of past adverse claims experience through change of ownership, control, management, or operation to directly obtain any workers' compensation insurance policy.

(c) It shall be inappropriate for any discussion on benefits, recovery, or settlement to include the threat or implication of criminal prosecution. Any threat or implication shall be immediately referred in writing to:

(1) The state bar if attorneys are in violation;

(2) The insurance commissioner if insurance company personnel are in violation; or

(3) The regulated industries complaints office if health care providers are in violation,

for investigation and, if appropriate, disciplinary action.

(d) An offense under subsections (a) and (b) shall constitute a:

(1) Class C felony if the value of the moneys obtained or denied is not less than \$2,000;

(2) Misdemeanor if the value of the moneys obtained or denied is less than \$2,000; or

(3) Petty misdemeanor if the providing of false information did not cause any monetary loss.

Any person subject to a criminal penalty under this section shall be ordered by a court to make restitution to an insurer or any other person for any financial loss sustained by the insurer or other person caused by the fraudulent act.

(e) In lieu of the criminal penalties set forth in subsection (d), any person who violates subsections (a) and (b) ~~may~~ shall be subject to the administrative penalties of restitution of benefits or payments fraudulently received under this chapter, whether received from an employer, insurer, or the special compensation fund, to be made to the source from which the compensation was received, and one or more of the following:

(1) A fine of not more than \$10,000 for each violation;

(2) Suspension or termination of benefits in whole or in part;

(3) Suspension or disqualification from providing medical care or services, vocational rehabilitation services, and

all other services rendered for payment under this chapter;

(4) Suspension or termination of payments for medical, vocational rehabilitation and all other services rendered under this chapter;

(5) Recoupment by the insurer of all payments made for medical care, medical services, vocational rehabilitation services, and all other services rendered for payment under this chapter; ~~[or]~~ and

(6) Reimbursement of attorney's fees and costs of the party or parties defrauded.

In cases where the any party successfully investigates and a determination that fraud has occurred under this chapter, shall not only be entitled to the administrative penalties specified under subsection (5) and (6), but shall also be entitled to fifty per cent of the administrative penalty award determined under subsection (1) of this section.

(f) With respect to the administrative penalties set forth in subsection (e), no penalty shall be imposed except upon consideration of a written complaint that specifically alleges a violation of this section occurring within two years of the date of said complaint. A copy of the complaint specifying the alleged violation shall be served promptly upon the person charged. The director or board shall issue, where a penalty is ordered, a written decision stating all findings following a hearing held not fewer than twenty days after written notice to the person charged. Any person aggrieved by the decision may appeal the decision under sections 386-87 and 386-88.

(g) The insurance fraud investigations branch, department of commerce and consumer affairs, may initiate investigations, prosecutions, and disciplinary actions to enforce this section."

SECTION 12. Section 431:10C-307.8, Hawaii Revised Statutes, is amended as follows:

**"§431:10C-307.8 Insurance Fraud Investigations Unit. (a)**

There is established in the insurance division an insurance fraud investigations unit.

(b) The unit shall employ attorneys, investigators, investigator assistants, and other support staff as necessary to promote the effective and efficient conduct of the unit's activities. Notwithstanding any other law to the contrary, the attorneys may represent the State in any judicial or administrative proceeding to enforce all applicable state laws relating to insurance fraud~~[7]~~ and workers' compensation fraud, including but not limited to criminal prosecutions and actions for declaratory and injunctive relief. Investigators may serve process and apply for and execute search warrants pursuant to chapter 803 and the rules of court but shall not otherwise have the powers of a police officer or deputy sheriff. The commissioner may hire such employees not subject to chapter 76.

(c) The purpose of the insurance fraud investigations unit shall be to conduct a statewide program for the prevention, investigation, and prosecution of insurance fraud cases, workers' compensation fraud as provided in section 386-98 and violations of all applicable state laws relating to insurance fraud. The insurance fraud investigations unit may also review and take appropriate action on complaints relating to insurance fraud~~[7]~~ and workers' compensation fraud.

(d) Funding for the insurance fraud investigations unit shall come from the motor vehicle insurance administration revolving fund."

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect upon approval.

INTRODUCED BY: \_\_\_\_\_

BY REQUEST